



Costs Decision

Site visit made on 3 December 2019

by S Harley BSc(Hons) MPhil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 10th December 2019

Costs application in relation to Appeal Ref: APP/B5480/W/19/3236760 Cranham Golf Course, St Marys Lane, Upminster RM14 3NU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr B Cameron (for Cranham Golf Course) for a partial award of costs against the Council of the London Borough of Havering.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for Adventure Golf Facility with ancillary overspill car parking associated with existing golf course.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council should have validated the planning application and issued a decision on it. The application for outline planning permission was submitted in January 2019. The Council did not validate the application on receipt. Instead, the Council advised on 20 February 2019 that the application ought not to be considered separately from all the reserved matters.
4. There was a subsequent exchange of correspondence between the parties, including reference by the applicant to the fact that it is not a *requirement* to include one or more reserved matters as part of an outline application in order for it to be validly made. There is a separate process for outline applications where the Council can, within a period of one month beginning with the date of receipt of the application, advise that the application ought not to be considered separately from all or any of the reserved matters, by notifying the applicant that they are unable to determine it unless further details are submitted, specifying the further details they require¹.
5. The Council did notify the appellant within the requisite timeframe that the application ought not to be considered separately from all or any of the reserved matters. However, despite a number of requests, it would seem that

¹Article 5(2) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (the DMPO)

Council did not specify the ways in which the application failed to meet the national and local list requirements for a valid application. I find unreasonable behaviour on the part of the Council in this respect.

6. The applicant followed the process set out for dealing with such disputes in Article 12 of the DMPO. As set out in the substantive appeal decision, the outcome is that the application is classified as a non-validated application. As such, the time scales for decision set out in Article 34 of the DMPO apply, which in turn enables an appeal to be made under section 78(2) of the Act where the Council has not given notice of their decision on the application.
7. On 29 August 2019, the applicant submitted further information to the Council in an attempt to resolve the impasse and get the application validated. On the basis of the all the information submitted, I have found that the application is valid. Indeed, the Council went on to validate the application the following working day, 30 August 2019. However, confirmation of validation was not given to the applicant until 18 September 2019 by which time the appeal had been lodged in order to comply with the deadline for such appeals. I am mindful, in this regard, that the formal Application Acknowledgement from the Council is dated 11 October 2019. I therefore find unreasonable behaviour on the part of the Council in failing to inform the applicant of the validation of the application within a reasonable period of time. Had that delay not occurred the appeal against the failure of the Council to issue a notice of their decision within the prescribed period may not have been necessary.
8. However, the appellant would, in all likelihood, have proceeded to appeal against the Council's decision had it determined the application, given its stated position in relation to the planning merits of the proposal. On this basis I find no wasted or unnecessary expense consequential upon the unreasonable behaviour.
9. Whilst I agree with the Council that further information is required to properly assess the proposal, neither this, nor the error made by the applicant in initially indicating that scale was for consideration at outline stage, leads me to any different conclusions in respect of the above matters.
10. The Council has indicated that formally designating the application as invalid and producing notification was necessary to satisfy the Council's statutory responsibility to provide details of applications received in the form of returns to central Government. In my experience the statutory responsibility to provide returns could have been fulfilled if the application had been validated and the procedure in Article 5(2) of the DMPO followed.
11. I acknowledge that Council planning services in general receive extensive amounts of correspondence and often face pressures relating to changes in staffing levels and other responsibilities. I see no reason to doubt that the Planning Service of the Council of the London Borough of Havering may face such pressures. However, this is not sufficient to justify the extent of the delays as set out above.
12. The Council considers that none of the examples of unreasonable behaviour set out in PPG are applicable to the current appeal. However, the PPG clearly states that the examples given are not exhaustive ².

² Paragraph: 046 Reference ID: 16-046-20140306

13. For the reasons set out above I find that no unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is not justified.

14. The application is refused.

S Harley

INSPECTOR